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TESTIMONY BEFORE MICHIGAN JUDICIARY COMMITTEE

IN FAVOR OF

HB 4117

My name is David L. Haron, I am an attorney in private practice with the Troy law firm of Frank, Haron, Weiner & Navarro and have practiced False Claims Act and Whistleblower litigation since 1993, successfully pursuing numerous cases including U.S. ex rel. Byrne v Damon Clinical Laboratories, in which the government recovered \$119 million from the Defendant for falsely billing clinical laboratory tests. At present our firm has over 50 cases pending or under investigation throughout the United States.

I encourage your support of the good governance legislation H.B. 4117, the Michigan False Claims Act.

As you may know in 1986, Senator Charles Grassley ( R- Iowa ) sponsored, and President Ronald Reagan signed into law, legislation that reinvigorated the federal False Claims Act. As a result, the federal False Claims Act has become the federal government's most successful tool for fighting

fraud in taxpayer-funded programs, returning nearly \$25 billion to the U.S. Treasury. And estimates predict that the level of fraud deterrence is well in excess of \$250 billion.

The federal False Claims Act has been so successful because it employs bedrock principles of fiscal conservatism. Most important, it joins private resources with government resources to expose and halt increasingly sophisticated and complex fraud schemes. Because the False Claims Act permits the government to dismiss frivolous actions and the Act severely penalizes such suits, prosecutorial resources are devoted to the most egregious fraud cases, returning nearly \$15 for every one dollar invested in prosecuting these cases. This successful public-private partnership is not a new idea, but instead stems back to Abraham Lincoln. In his wisdom, President Lincoln knew that the government works best when it is in partnership with the people it serves.

Michigan has a Medicaid False Claims Act, recently amended by 2008 Public Act 421. By enacting H.B. 4117, Michigan will join many other jurisdictions to pattern state laws after the entire federal False Claims Act so that similar successes can be achieved at the state and local level. This is legislation that, if enacted, sends a strong message to those who are tempted to defraud and abuse the programs funded by Michigan taxpayers. And it would undoubtedly return significant amounts of taxpayer dollars that would otherwise be lost to such fraud and abuse.

Support of false claims legislation is a bipartisan effort. Your efforts to make sure that precious tax dollars are spent both wisely and honestly are surely welcomed by the citizens who are often skeptical about how well the government stewards their hard-earned tax dollars. Of course, fighting fraud is as important in this context of state and local programs as it is in federal programs.

I urge members of both parties to fully support H.B. 4117, which will produce the kind of success that the federal False Claims Act has.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Haron". The signature is written in a cursive style with a large initial "D".

David L. Haron

# False Claims Acts

## Legislative Victories

David L. Haron

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# The Federal False Claims Act

- **Since 1986, the False Claims Act has returned over \$20 billion** to the U.S. Government, making it the most effective fraud-fighting tool we have.
- **The U.S. Government is getting back \$15 for every \$1 invested** in health care investigations and prosecutions.
- **The structure of DoJ limits recoveries** and fewer than 100 cases (of all types) are resolved every year.
- **States have begun to supplement the effort.** Twenty-three states now have False Claims Act laws.

# How a False Claims Act Works

- **Allows whistleblowers to bring suits under seal** in the name of the state (*qui tam* actions) against parties that have committed fraud against a state program.
- **Gives control of whistleblower suits to the Attorney General or to local prosecuting authorities**
- **Provides for triple damages and civil penalties** so the state is “made whole” for the costs of investigation, lost interest and whistleblower awards on top of what was taken by fraud.
- **Provides awards to whistleblowers of 15 to 30 percent**, depending on circumstances (awards under the Federal FCA have averaged 17 percent)

# **Why Whistleblower Awards are Needed**

- **An insider is often the only person who both understands the fraud and has the evidence to support a fraud charge.**
- **Whistleblowers need incentives in order to overcome the certainty of losing employment and being black-balled in their profession.**
- **Whistleblower cases take time and put tremendous financial and emotional stress on Relators and their families.**

# Why False Claims Acts Are Effective

- Damages are tripled;
- Whistleblowers come forward with evidence that would otherwise remain secret;
- Whistleblower cases cannot be ignored or easily derailed;
- The Government is able to streamline and focus their investigations due the evidence of the whistleblower;
- The Government is the big financial winner getting, on average, 83 percent of total awards.

# False Claims Act Math:

## A Case Example

- **Assumption:** The amount defrauded from the Government by the defendant is \$20 million.
- **The case is adjudicated for triple damages of \$60 million.**
- **The whistleblower is awarded the national average of 17% of the settlement, or \$10.2 million, which is shared with his or her lawyer and upon which taxes are paid.**
- **The Government nets out \$50.8 million.**

# **Benefits of a State False Claims Act**

- **A state FCA, if used, will recoup substantial amounts of money for the state.**
- **A state could require reinvesting recoveries in its fraud prevention programs.**
- **Once up and running, a state FCA will have a substantial deterrence effect on future fraud.**
- **A state FCA will level the playing field for honest providers.**
- **A state FCA will reveal weaknesses in administration and cost management.**

# Why Frivolous Lawsuits are Rare

- **A lawyer must take the case.** A False Claims Act lawyer will only take a case if he or she thinks it can be won and that means a substantial body of evidence must point to substantive fraud.
- **The case must present new information.** If the facts have previously been disclosed in a newspaper article, court proceeding, or other investigation, the case will be dismissed.
- **If a whistleblower brings a frivolous action,** the defendants are awarded reasonable attorneys' fees and expenses.

# All Over the Country States Are Adopting False Claims Acts

- The following 23 states, the District of Columbia, along with New York City and Chicago, have their own versions of the False Claim Act with *qui tam* provisions, enabling them to recover money at the state or municipal level.
  - California
  - Delaware
  - District of Columbia
  - Florida
  - Georgia
  - Hawaii
  - Illinois
  - Indiana
  - Louisiana
  - Massachusetts
  - Michigan (Medicaid only)
  - Montana
  - New Hampshire
  - New Jersey
  - New Mexico
  - New York
  - Nevada
  - Oklahoma
  - Rhode Island
  - Tennessee
  - Texas
  - Virginia
  - Wisconsin

# Examples of State Recoveries

- California** 1998 BankAmerica Improperly retained unclaimed municipal bonds **\$187 million**  
2000 Toshiba Knowingly sold defective computers **\$30 million**  
2001 Tutor-Saliba-Perini JV Fraudulent billing during construction of Los Angeles Subway system **\$31.9 million**  
2003 Mandated Cost Systems Inc. Submission of inflated and false bills **\$3.4 million**  
2005 Strategic Resource Solutions Fraud involving the installation and monitoring of energy-efficient heating and cooling equipment in San Francisco schools **\$43.1 million**
- Florida** 1996 CareFlorida Health Plan Inc. Submission of fraudulent Medicaid enrollments. **\$1.75 million**
- Hawaii** 2001 Bergen Brunswick Corp. Wrongfully recycled and repackaged unused drugs from nursing homes facilities **\$4 million**
- Texas** 2001 Driscoll Children's Hospital and Foundation Filing false expense reports, reporting inflated charity work, and engaging in kickbacks **\$14.5 million**  
2005 Roxane Laboratories (Boehringer Ingelheim Corp.) Marketing the spread by falsely reported their wholesale drug prices to the Medicaid program. **\$10 million**

# Why We Need a State False Claims Act

- The federal FCA produces only a handful of judgments and settlements a year, usually involving frauds of national scope.
- The federal FCA does not cover fraud against the states.
- The Department Of Justice simply does not have the resources to pursue all reports of fraud without assistance from state investigators.
- In order to pursue cases of fraud against the state, each state must enact its own False Claims Act.
- The False Claims Act is an important tool if Michigan is serious about stopping fraud, waste and abuse.

# The False Claims Act Will Shine a Light on Fraud, Waste and Abuse

